

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES J. HOWARD,	:	Case No. 3:16-cv-517
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
v.	:	
	:	
MONTGOMERY COUNTY JAIL, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**ENTRY AND ORDER OVERRULING OBJECTIONS (DOC. 76); ADOPTING  
REPORT AND RECOMMENDATIONS (DOC. 71); GRANTING  
DEFENDANTS' MOTIONS TO DISMISS THE SECOND AMENDED  
COMPLAINT (DOCS. 50, 52); DISMISSING THE SECOND AMENDED  
COMPLAINT (DOC. 49); AND TERMINATING THIS CASE**

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This civil rights action under 42 U.S.C. § 1983 is before the Court on the Objections (Doc. 76) filed by Plaintiff James J. Howard ("Howard") to Magistrate Judge Michael J. Newman's Report and Recommendation ("Report") (Doc. 71). Howard alleges that, while a pre-trial detainee in the Montgomery County Jail, the Defendants' deliberate indifference to his serious medical condition, *i.e.*, diabetes, resulted in the amputation of the toes on his right foot. On February 20, 2018, with leave of Court, Howard filed a Second Amended Complaint for damages against Defendants Montgomery County, Ohio; Montgomery County Sheriff Phil Plummer; Naphcare, Inc.; Theresa Wallace, a Registered Nurse; and Valerie Beirise, a Nurse Practitioner.

This case was before Magistrate Judge Newman on two motions to dismiss the Second Amended Complaint: (1) a Motion to Dismiss (Doc. 50) filed by Montgomery

County and Sheriff Plummer (collectively, the “County Defendants”); and (2) a Motion to Dismiss (Doc. 52) filed by Naphcare, Wallace, and Beirise (collectively, the “Naphcare Defendants”). After consideration of Defendants’ supporting memoranda, Plaintiff’s memoranda in opposition (Docs. 51, 60), and Defendants’ replies (Docs. 53, 61), Magistrate Judge Newman entered his Report (Doc. 71) recommending that the Court grant both Motions to Dismiss and terminate this action. Howard filed Objections (Doc. 76) to the Report, and the County Defendants and Naphcare Defendants filed Responses (Docs. 77, 78) to the Objections. This matter is ripe for review.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court made a *de novo* review of the record in this case. Upon said review, the Court finds that the Objections to the Report are not well-taken and are hereby **OVERRULED**. The Court therefore **ADOPTS** the Report (Doc. 71) in its entirety and rules as follows:

1. The County Defendants’ Motion to Dismiss (Doc. 50) is **GRANTED**;
2. The Naphcare Defendants’ Motion to Dismiss (Doc. 52) is **GRANTED**;
3. Howard’s Second Amended Complaint (Doc. 49) is **DISMISSED**; and
4. This case is **TERMINATED** on the Court’s docket.

**DONE** and **ORDERED** in Dayton, Ohio, this Monday, August 13, 2018.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE